

Supreme Court Watch

Rudeness is in the eye of the belittler

[Julia Stronks](#)

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Last spring the U.S. Supreme Court handed down two cases that dealt with the presence of the Ten Commandments on public grounds. Four judges ruled that public display of the Ten Commandments established religion in violation of the First Amendment. Four judges ruled that the commandments did not violate the Establishment Clause. And one judge, Justice Stephen Breyer, split his opinions, saying that the intent and context of the display were key. In one case the intent was to advance religious belief, which violated the Establishment Clause. In the other case, however, history had demonstrated that people did not see the commandments as a coercive force, so the First Amendment was not violated.

These two cases made for confusing jurisprudence because the decisions did not provide legislators with sufficient guidance in determining what is and is not allowed. However, they raise an important question for us. Just what is "religion" under the First Amendment? Until we answer this question, we cannot hope to figure out the best way to handle cases like "under God" in the Pledge of Allegiance, celebration of faith-based holidays in schools or even difficult curriculum issues like the hotly debated role of Intelligent Design or creation science in our classrooms.

If religion is belief in God, we have a clear way to determine what is and is not religious belief. However, the issue is not this simple. In the early part of the 20th century, the Supreme Court assumed that to receive protection under the First Amendment religion had to include belief in one deity. In the 1970s, though, the Court expanded our understanding of religion to include "worldviews." This made a great deal of sense in cases that involved the free exercise of religion. The protection of the First Amendment was extended to those who believed in a deity. It was also extended to those who did not believe in God but had a worldview that directed their lives. Under an expanded view of religion, Buddhist practices, for example, received the same protection as Christian practices. In a nation made up of citizens with a wide variety of backgrounds this expansion of protection seemed to be the best understanding of religious liberty.

However, in establishment cases an expanded definition of religion is more complicated. Consider the public school setting. If religion is belief in God, then teaching creation science seems clearly to be advocating religious belief. But, if religion is worldview, then creation science is religious, but so is Darwinian evolution or humanism. All of these

perspectives involve foundational assumptions about what it means to be human. In fact, if religion is worldview, then it is not possible to teach in a way that avoids advocating religious belief, broadly defined. The only way to handle conflict in this arena is to develop a way to invite a pluralistic understanding of the public square. Traditional religious voices must be invited into the public square, but so must all worldview voices. The public square becomes a marketplace of ideas for all, not just for the majority.

People that do not identify themselves as religious have been very rude to conservative Christians in the public square. Throughout the 1970s and '80s many Christians were pushed away from public debate and eventually they rebelled. They organized in a grassroots way and now many argue that conservative Christians have more public power than their numbers ought to justify.

Conservative Christians, also, have been very rude to other minority voices in the public square. When conservative Christians are in the majority they have used their power to shut down the voices of the gay community and others.

The tendency for most Americans is to think of the public square in very pragmatic, power-directed ways. When I am in the majority, I like the majority to control the public square. But, when I am in the minority, I like the public square to be a place for a plurality of voices. This approach breeds conflict, not resolution. We are all guilty of it but we cannot achieve consensus on difficult issues until we beat this type of power play out of ourselves. We have to decide – is the public square for everyone, in which case I must accept that there will be voices I do not like? Or, is the public square for the majority, in which case I might be left out?